



**NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755**

**Serial: J-145-86
26 March 1986**

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: H.R. 3378 - ACTION MEMORANDUM

1. The above-captioned bill is intended to amend the Omnibus Crime Control and Safe Streets Act of 1968 (Title III) relating to electronic surveillance to cover advances in technological developments in electronic communications.

2. On 5 March, Deputy Assistant Attorney General James I. K. Knapp testified before the Subcommittee on Courts, Civil Liberties and Administration of Justice of the House Judiciary Committee on this proposed legislation. Pursuant to routine procedures, the text of Mr. Knapp's testimony was duly circulated for comment among concerned executive branch agencies by the Office of Management and Budget, but unfortunately the text was not received at this Agency until 5 March after the text had been made available to the subcommittee, and thus too late to include changes urgently desired by this Agency. Because of these circumstances, Mr. Knapp's prepared testimony contained some statements which are antithetical to the interest of this Agency.

3. In the segment of his testimony dealing with cellular telephones (pages 7-10), Mr. Knapp strongly advocates the encryption of the radio portion of cellular telephone communications. Indeed the testimony states that only encrypted calls should receive full Title III protection. As you know, pursuant to NSDD 145, dated 17 September 1984, the government is undertaking a massive program to strengthen American communications security both for the private and government sectors. This Agency has a major role in this program. A significant reason for having NSA participate in this program is to ensure that non-U.S. government activity in cryptography will not interfere with, or make more difficult, NSA's responsibilities in the communications security and signals intelligence areas. Moreover, it clearly is not in the government's interest to widely disseminate cryptography since this would adversely affect not only signals intelligence and communications security efforts, but law enforcement activities as well. Mr. Knapp's testimony also seems to say that encryption of communications would support an argument for "reasonable expectation of privacy" in the context of Fourth Amendment rights. I have been advised that this principle is not firmly established in the law. I would urge that, for the reasons outlined above, the Department of Justice not advocate this position.

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4. As this proposed legislation proceeds through the Congress, there should be an opportunity to adjust the record stating the Administration's position on this legislation which would accommodate the concerns expressed above. I urge that our respective staffs get together soon to work out a mutually agreeable statement for early submission to the appropriate congressional subcommittees.

Wm E Odom

WILLIAM E. ODOM
Lieutenant General, USA
Director, NSA/Chief, CSS

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